Docket No. 66745-43522

PATENT

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In re application of: Gatley et al.	:	
Serial No.: 10/734,775	:	Examiner: Bertheaud
Filed: December 12, 2003	:	Group Art Unit: 3746
For: MOTOR COOLING AND EXHAUST DILUTING BLOWER HOUSING WITH HEAT SHIELD AND NOISE MUFFLER	:	

APPEAL BRIEF UNDER 37 CFR § 41.37

Submitted herewith is applicants' Appeal Brief, appealing the Final Rejection of claims 1-15.

(1) Real Party In Interest

The real party in interest in this Appeal is Jakel, Inc. by an assignment recorded on June 7, 2004, at Reel No. 015431, Frame No. 0154.

(2) Related Appeals and Interferences

There are no related appeals or interferences.

(3) Status of Claims

Claims 1-20 are pending in the application. Claims 1-15 have been given a Final Rejection.

Claims 16-20 have been allowed.

This is an appeal of the Final Rejection of claims 1-15.

(4) Status of Amendments

No amendments have been filed following the Final Rejection of claims 1-15 mailed on April 13, 2007.

(5) Summary of Claimed Subject Matter

Of claims 1-15 that have been given a Final Rejection, claims 1 and 8 are the only independent claims.

Independent Claim 1

The subject matter of the invention defined by independent claim 1 is a heater blower housing 132 shown in Figures 15-18 that is attachable to a separate heater 154 (specification page 16, lines 16-17, and page 18, line 24- page 19, line 2). The heater blower housing has a fan compartment 26' containing a fan 48'. A motor 78' is operatively connected to the fan 48' to rotate the fan in the fan compartment 26'. (Specification page 11, lines 8-10 and 24-25; and page 12, lines 11-15).

The heater blower housing also includes a dilution compartment or exhaust compartment 86' (specification page 18, lines 5-7). The exhaust compartment 86' has an exhaust compartment opening defined by a side wall flange 96' that receives exhaust gases

from a separate heater 154 when the heater blower housing 132 is attached to the separate heater 154 (specification page 18, line 21- page 19, line 5). The dilution or exhaust compartment 152 communicates with the fan compartment 26' (specification page 13, lines 10-14), and the exhaust compartment 26' is positioned to receive exhaust gases from a separate heater and to direct the exhaust gases to the fan compartment (specification page 20, lines 12-17). At least a portion of the dilution or exhaust compartment 152 has a layered wall (specification page 19, lines 6-8), with at least an interior layer 156 inside the dilution/exhaust compartment 152 (specification page 19, lines 13-14) and an exterior layer 94' defining an exterior surface of blower housing, with the interior layer 156 and the exterior layer 94' being separate layers of the layered wall (specification page 19, lines 6-14, and page 20, line 17- page 21, line 2).

Independent Claim 8

The subject matter of the invention defined by independent claim 8 is a heater blower housing 132 shown in Figures 15-18 that is attachable to a separate heater 154 (specification page 16, lines 16-17, and page 18, line 24- page 19, line 2). The heater blower housing has a fan compartment 26' containing a fan 48'. A motor 78' is operatively connected to the fan 48' to rotate the fan in the fan compartment 26'. (Specification page 11, lines 8-10 and 24-25; and page 12, lines 11-15).

The heater blower housing also includes a dilution compartment or exhaust compartment 86' (specification page 18, lines 5-7). The dilution or exhaust compartment 152 communicates with the fan compartment 26' (specification page 13, lines 10-14), and has at least a portion of a wall positioned to receive exhaust gases from a separate heater to which the blower housing is attached to direct the exhaust gases to the fan compartment (specification page 20, lines 12-17). A heat shield 156 is attached to the portion of the wall 94' inside the exhaust compartment 152 (specification page 19, lines 13-16, and page 20, lines 9-17).

(6) Grounds of rejection to be reviewed on Appeal

The grounds of rejection to be reviewed on Appeal is the final rejection of claims 1-15 under 35 U.S.C. section 102 (b) for being anticipated by the disclosure of the U. S. patent of Morgan No. 6,474,981.

(7) Argument

Claim Rejections – 35 U.S.C. § 102

Claims 1-15 of the application were rejected under 35 U.S.C. § 102(b) as being anticipated by the disclosure of the U.S. Patent of Morgan No. 6,474,981. It is submitted that the Morgan reference does not provide sufficient information to anticipate the subject matter of the rejected claims, because the reference does not identically show all of the elements of the invention recited in the rejected claims as required by patent case law.

> For a prior-art reference to anticipate, every element of the claimed invention must be identically shown in a single reference.
>
> *In Re Bond,* 910 F.2d 831, 15 U.S.P.Q. 2d 1566, 1567, 1568 (Fed. Cir. 1990).
>
> [A]ny degree of physical difference, however slight, invalidates claims of anticipation.
>
> *Ultradent Products, Inc. v. Life-Like Cosmetics, Inc.*, 39 U.S.P.Q. 2d 1969, 1980 (Utah 1996).

Of the rejected claims 1-15, claims 1 and 8 are independent claims. These independent claims recite elements of the invention that are not identically shown by the Morgan reference, and therefore under the above-cited case law, the Morgan reference does not anticipate these claims.

An important distinction between the subject matter of the invention and the subject matter of the Morgan reference is that the heater blower housing of the invention draws hot exhaust gases out of a heater and delivers the exhaust gases to an exhaust flue. Because the heater blower housing of the invention receives hot exhaust gases from a heater, the housing is provided with a layered wall with an interior layer in the housing exhaust chamber that receives the hot exhaust gases from the separate heater. This interior layer of the exhaust chamber

insulates the exterior of the exhaust chamber from the hot exhaust gases and directs the hot exhaust gases through the blower housing.

In contrast to the above, the Morgan reference discloses a fundamentally different blower. The Morgan reference blower supplies ambient air to a combustion chamber of a furnace (see column 1, lines 26-29 of the Morgan reference). Thus, the construction of the blower in the Morgan reference blows ambient air into a combustion chamber, and is not designed to receive hot exhaust gases from a combustion chamber as is the blower housing of the invention. Because the Morgan blower does not direct hot exhaust gases, there is no need to provide the blower housing with a heat shield such as the interior layer of the blower housing of the invention.

Independent Claim 1

Independent claim 1 recites a heater blower housing that comprises an exhaust compartment in the housing where the exhaust compartment has an exhaust compartment opening that receives exhaust gases from a separate heater when the heater blower housing is attached to the separate heater. This structural element of the invention is not identically shown by the Morgan reference. The Morgan blower is not designed to be attachable to a separate heater and does not have an exhaust compartment opening that receives exhaust gases when the blower is attached to a heater. Therefore, the Morgan reference does not anticipate this element. As stated earlier, the Morgan reference discloses a blower that blows ambient air into a combustion chamber. The reference does not identically show a blower housing that is attachable to a separate heater, or a blower housing with an exhaust compartment with an opening to receive exhaust gases from the heater as recited in claim 1. This physical difference invalidates any claim that the Morgan reference anticipates claim 1.

Furthermore, claim 1 also recites that the exhaust compartment is positioned to receive exhaust gases from a separate heater when the blower housing is attached to the heater, and that the exhaust compartment is positioned to direct the exhaust gases to the fan compartment.

Again, the Morgan reference does not identically show an exhaust compartment that receives exhaust gases when attached to a separate heater, much less an exhaust compartment that directs exhaust gases to a fan compartment as recited in claim 1. This physical difference invalidates any claim that the Morgan reference anticipates the subject matter of claim 1.

Furthermore, the rejections of claims 1-15 state that the Morgan reference discloses a fan compartment 42, and a layered wall with "at least an interior layer, or what could be considered a heat shield (section of tube 42 that extends from 92 to end wall 58)." In view of this explanation of the rejection, it appears that the rejection is interpreting the combustion tube 42 of the Morgan reference as both the fan compartment recited in claim 1 and as the interior layer inside the exhaust compartment recited in claim 1. The rejection is based on interpreting one element disclosed in the Morgan reference as two separate elements recited in claim 1. This is a misinterpretation of what is disclosed by the Morgan reference. Because the rejection of claim 1 is based on a misinterpretation of the Morgan reference, the rejection is made in error and should be reversed and claim 1 allowed. Claim 1 and its dependent claims 2-7 are all allowable over the Morgan reference for the reasons set forth above.

Dependent Claim 2

Claim 2 depends from claim 1 and further requires the interior layer of the exhaust compartment being positioned on an opposite side of the exhaust compartment opening where exhaust gases received from a separate heater are directed toward and contact the interior layer. In contrast, the section of the tube 42 of the Morgan reference that is interpreted as the claimed interior layer is not positioned on opposite side of an exhaust compartment from an exhaust compartment opening that receives exhaust gases. This interpretation of the Morgan reference to read on the subject matter of claim 2 is based on hindsight of the invention, and is not based on what the Morgan reference discloses. Because the Morgan reference does not identically show the features of the invention recited in claim 2, claim 2 is allowable over the Morgan reference. The rejection of claim 2 should be reversed and the claim allowed.

Dependent Claim 5

Dependent claim 5 depends from claim 1 and further requires a fan compartment opening in the heater blower housing communicating the fan compartment with the exhaust compartment, and the interior layer of the exhaust compartment layered wall extending from adjacent the exhaust compartment opening to adjacent the fan compartment opening to direct exhaust gases from the exhaust compartment opening to the fan compartment opening. The Final Rejection of claim 5 is unclear as to where these features of the invention are identically shown by the Morgan reference. The rejection merely refers to Figure 3 of the Morgan reference, and states that the reference discloses the features of claim 5. Because the Final Rejection fails to explain how the Morgan reference identically shows the features of the invention recited in claim 5, claim 5 is not anticipated by the Morgan reference. The rejection of the claim should be reversed and the claim allowed.

Dependent Claims 6 and 7

Claim 6 depends from claim 5 and claim 7 depends from claim 6. The combined subject matter of these dependent claims recites the interior layer of the layered wall having a curved length as the layered wall extends from adjacent the exhaust compartment opening to adjacent the fan compartment opening, and the curved length of the interior wall having a concave cross-section. Again the Final Rejection of these claims merely refers to Figure 3, without providing an explanation as to how the Morgan reference identically shows these features of the invention. Because the Morgan reference does not identically show these features of the invention recited in dependent claims 6 and 7, the reference does not anticipate the claims. The rejections of the claims should be reversed and the claims allowed.

Independent Claim 8

Independent claim 8, like claim 1, recites a blower housing that is attachable to a separate heater, where the blower housing comprises an exhaust compartment having at least a portion of a wall positioned to receive exhaust gases from a separate heater to which the

blower housing is attached to direct the gases to the fan compartment. For the same reasons set forth above with regard to claim 1 in explaining how these elements of the invention are not identically shown by the Morgan reference, the Morgan reference fails to anticipate claim 8.

Furthermore, claim 8 also recites a heat shield attached to the portion of the exhaust compartment wall. As explained above with regard to claim 1, the rejection of claim 8 is based on interpreting one element disclosed by the Morgan reference, i.e. the combustion tube 42, has two elements of the invention recited in claim 8, i.e. the fan compartment and the heat shield. Because the rejection of claim 8 is based on a misinterpretation of what the Morgan reference discloses, the rejection is made in error and should be withdrawn and the claim allowed. Claim 8 and its dependent claims 9-15 are all allowable over the Morgan reference for the same reasons set forth above with regard to claim 1.

Dependent Claim 9

Claim 9 depends from claim 8 and recites an exhaust compartment opening in the heater blower housing, the exhaust compartment opening being positioned on the heater blower housing to receive exhaust gases from a separate heater to which the heater blower housing is attached, and the heat shield being positioned between the portion of the exhaust compartment that is positioned to receive exhaust gases from a separate heater and the exhaust compartment opening. As explained earlier, the Morgan reference discloses a furnace blower that receives ambient air and heats the ambient air. The Morgan reference does not disclose a blower housing that is attached both to a separate heater to receive hot exhaust gases from the separate heater. The Morgan reference does not identically disclose the subject matter of dependent claim 9, and therefore does not anticipate that subject matter. The rejection of claim 9 should be reversed and the claim allowed.

Dependent Claim 10

Claim 10 depends from claim 8 and recites the subject matter of an exhaust compartment opening positioned on the heater blower housing to receive exhaust gases from a

separate heater to which the heater blower housing is attached. Again, the Morgan reference discloses a furnace blower and does not disclose an exhaust compartment that is attachable to a separate heater to receive exhaust gases from the separate heater. The Morgan reference therefore does not identically show the subject matter of the invention recited in claim 10, and therefore does not anticipate that subject matter. The rejection of claim 10 should be reversed and the claim allowed.

Dependent Claim 13

Claim 13 depends from claim 8 and recites substantially the same subject matter as dependent claim 5. For the reasons set forth earlier with regard to dependent claim 5, the Morgan reference does not anticipate the subject matter of claim 13. The rejection of claim 13 should be reversed and the claim allowed.

Dependent Claims 14 and 15

Dependent claims 14 and 15 recite substantially the same subject matter as dependent claims 6 and 7 discussed earlier. For the same reasons discussed earlier with regard to claims 6 and 7, dependent claims 14 and 15 are not anticipated by the Morgan reference. The rejection of these claims should be reversed and the claims allowed.

For all the reasons set forth above, it is respectfully submitted that the Morgan reference does not anticipate the subject matter of claims 1-15, and that the rejection of the claims and the interpretation of the Morgan reference in the Final Rejection of the claims is based on hindsight of the present invention. The rejections of the claims should be reversed and the claims allowed.

(8) Claims Appendix

1. A heater blower housing that is attachable to a separate heater, the heater blower housing comprising:

a fan compartment in the heater blower housing;

a fan in the fan compartment;

a motor operatively connected to the fan for rotation of the fan in the fan compartment by the motor;

an exhaust compartment in the heater blower housing, the exhaust compartment having an exhaust compartment opening that receives exhaust gases from a separate heater when the heart blower housing is attached to the separate heater, the exhaust compartment communicating with the fan compartment and being positioned to receive exhaust gases from a separate heater and to direct the exhaust gases to the fan compartment, and at least a portion of the exhaust compartment having a layered wall with at least an interior layer inside the exhaust compartment and an exterior layer defining an exterior surface of the blower housing, the interior layer and the exterior layer being separate layers of the layered wall.

2. The heater blower housing of Claim 1, further comprising:

the interior layer being positioned on an opposite side of the exhaust compartment from the exhaust compartment opening where exhaust gases received from a separate heater are directed toward and contact the interior layer.

3. The heater blower housing of Claim 1, further comprising:

the interior layer of the layered wall being spaced from the exterior layer of the layered wall.

4. The heater blower housing of Claim 3, further comprising:

a hollow void between the interior layer of the layered wall and the exterior layer of the layered wall.

5. The heater blower housing of Claim 1, further comprising:

a fan compartment opening in the heater blower housing communicating the fan compartment with the exhaust compartment; and,

the interior layer extending from adjacent the exhaust compartment opening to adjacent the fan compartment opening to direct exhaust gases from the exhaust compartment opening to the fan compartment opening.

6. The heater blower housing of Claim 5, further comprising:

the interior layer of the layered wall having a curved length as the layered wall extends from adjacent the exhaust compartment opening to adjacent the fan compartment opening.

7. The heater blower housing of Claim 6, further comprising:

the curved length of the interior layer having a concave cross section.

8. A heater blower housing that is attachable to a separate heater, the heater blower housing comprising:

a fan compartment in the heater blower housing;

a fan in the fan compartment;

a motor operatively connected to the fan for rotation of the fan in the fan compartment by the motor;

an exhaust compartment in the heater blower housing, the exhaust compartment communicating with the fan compartment and having at least a portion of a wall positioned to receive exhaust gases from a separate heater to which the heater blower housing is attached to direct the exhaust gases to the fan compartment; and,

a heat shield attached to the portion of the wall inside the exhaust compartment.

9. The heater blower housing of Claim 8, further comprising:

an exhaust compartment opening in the heater blower housing communicating an exterior environment of the heater blower housing with the exhaust compartment, the exhaust compartment opening being positioned on the heating blower housing to receive exhaust gases from a separate heater to which the heater blower housing is attached; and,

the heat shield being positioned between the portion of the wall of the exhaust compartment and the exhaust compartment opening.

10. The heater blower housing of Claim 8, further comprising:

an exhaust compartment opening in the heater blower housing communicating an exterior environment of the heater blower housing with the exhaust compartment, the exhaust compartment opening being positioned on the heater blower housing to receive exhaust gases from a separate heater to which the heater blower housing is attached; and,

the heat shield being positioned inside the exhaust compartment opposite the exhaust compartment opening.

11. The heater blower housing of Claim 8, further comprising:

the heat shield being spaced from the portion of the wall.

12. The heater blower housing of Claim 11, further comprising:

a hollow void between the heat shield and the portion of the wall.

13. The heater blower housing of Claim 8, further comprising:

an exhaust compartment opening in the heater blower housing communicating an exterior environment of the heater blower housing with the exhaust compartment, the

exhaust compartment opening being positioned on the heater blower housing to receive exhaust gases from a separate heater to which the heater blower housing is attached;

a fan compartment opening in the heater blower housing communicating the fan compartment with the exhaust compartment; and,

the heat shield extending from adjacent the exhaust compartment opening at one end of the heat shield to adjacent the fan compartment opening at an opposite end of the heat shield to direct exhaust gases from the exhaust compartment opening to the fan compartment opening.

14. The heater blower housing of Claim 13, further comprising:

the heat shield having a curved length as the heat shield extends from the one end of the heat shield to the opposite end of the heat shield.

15. The heater blower housing of Claim 14, further comprising:

the curved length of the heat shield having a concave cross section.

(9) Evidence Appendix

None.

(10) Related Proceedings Appendix

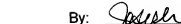
None.

It is respectfully submitted that, for the reasons set forth above, the anticipation rejection of claims 1-15 is made in error and should be reversed and the claims allowed.

An oral hearing is not requested.

Respectfully submitted,

Thompson Coburn LLP

By: 

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